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In the Supreme Court of the United States

LEONARD EDELMAN,

Petitioner,

v.

LYNCHBURG COLLEGE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Employment Lawyers Association (NELA) is a voluntary organization, founded in 1985, of over 3,000 attorneys who specialize in representing individuals in controversies arising out of the workplace. It is the country's only professional membership organization comprised of lawyers who primarily represent employees in cases involving employment discrimination, employee benefits, wrongful discharge, and other employment-related matters.

As part of its advocacy efforts, NELA regularly supports precedent setting litigation affecting the rights of individuals in the workplace. NELA has filed numerous *amicus curiae* briefs before the U.S. Supreme Court and the federal appellate and district courts regarding the proper interpretation and application of employment discrimination laws to ensure that the laws are fully enforced and that the rights of workers are fully protected. Some of the more recent cases before this Court include: *Pollard v. E.I. du Pont de Nemours & Co.*, No 00-763 (U.S. June 4, 2001); *Reeves v. Sanderson Plumbing Products*, 530 U.S. ___, 120 S. Ct. 2097 (2000); *Faragher v. City of Boca Raton*, ___ U.S. ___, 118 S.Ct. 2275 (1998); and *Burlington Industries v. Ellerth*, ___ U.S. ___, 118 S.Ct. 2257 (1998).

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[1] The consents of the parties have been filed with the Clerk of the Court. Pursuant to Supreme Court Rule 37.6, *Amicus Curiae* NELA states that with the exception that counsel for petitioner, Eric Schnapper, is a member of NELA and, as such, pays general membership dues, no counsel for any party authored this brief in whole or in part and that no party or entity other than *amicus curiae*, its members, or counsel made a monetary contribution to the preparation or submission of this brief.

NELA has a compelling interest in ensuring that the goals of Title VII of the Civil Rights Act of 1965, as amended, are fully realized. Liberal interpretation of the laws against employment discrimination is not only appropriate, but required in light of their remedial, preventive, and deterrent purposes. In the present case, NELA is concerned that the Fourth Circuit improperly has read into the language of Title VII a requirement that materially weakens the statute's substantive protections by limiting the ability of unsophisticated charging parties to cure technical defects that, under the decision below, render their charges invalid.

It is important to remember that at least in the initial stages of the administrative process, most people who believe they have been victimized by employment discrimination will not be represented by counsel and may have only the vaguest notion of their rights and obligations under the nation's civil rights laws. Additionally, an individual who has just gone through the extremely traumatic experience of being fired from a job, rejected for promotion, or as in Edelman's case, denied the opportunity to continue his career, or other life-changing adverse employment action is likely to be in a highly emotional state. The realization that their employer may have broken faith by discriminating against them may dawn only slowly and reluctantly on those who have invested years of loyalty in an enterprise they love. In such circumstances, affected individuals are likely to rely heavily on EEOC forms and instructions and at the time of submission are unlikely to even be aware that a Title VII charge must be verified, let alone that there is a time limit.

Contrary to the conclusion of the Fourth Circuit, there is no congressional mandate that for a timely filed

charge of discrimination to be valid, the statutory verification requirement must be fulfilled within the limitations period. Indeed, such a requirement would frustrate rather than further the salutary goals of Title VII and other civil rights laws for which it is the model. Moreover, the conclusion of the court below is compelled not by the plain meaning of the words of the statute, but by an overly restrictive view of the law that is completely at odds with the remedial purposes of the civil rights protections Congress intended.

On the other hand, the Equal Employment Opportunity Commission's (EEOC)'s longstanding interpretation of the statutory language to allow post-limitations verification of a timely filed charge as expressly set forth in the regulation at issue is not only reasonable, but compelling in light of the congressional purposes underlying the enactment of Title VII. Additionally, this interpretation, embraced by the majority of the circuits that have considered the issue, further serves those purposes through its refusal to victimize charging parties a second time by laying a trap for the unwary in the form of a verification requirement that elevates form over substance.

For the foregoing reasons NELA files this brief *amicus curiae* in support of Petitioner.

SUMMARY OF ARGUMENT

The statutory language of Title VII upon which the regulation here at issue is based is capable of more than one interpretation and has been interpreted by other courts and earlier decisions of the Fourth Circuit to permit relation-back of post limitations charge verification.

The plain meaning analysis invoked by the court below to invalidate the regulation is, therefore, inapplicable. Precisely because the meaning of the statutory language is not plain and unambiguous, the court below was required, in accordance with the guidance provided by this Court, to assess the validity of the regulation in light of the statutory context and legislative purposes. Since that analysis confirms that the regulation is a permissible construction of the statutory language consistent with its purposes, the regulation is valid. Therefore, petitioner's timely filed charge alleging a violation of Title VII that, pursuant to the EEOC regulation, was subsequently verified after the running of the statutory limitations period complied with the requirements of Title VII.

ARGUMENT

I. The Court Below Erroneously Concluded That The Meaning Of The Title VII Language At Issue Is Plain And Unambiguous.

Title VII provides that "charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." 42 U.S.C. §2000e-5(b). Another section establishes the limitations period within which a charge must be filed as 180 days after the alleged discrimination or, in a "deferral state," 300 days. 42 U.S.C. §2000e-5(e)(1). The regulation at issue, 29 C.F.R. §1601.12 (b), provides, in part: "[a] charge may be amended to cure technical defects or omissions, including the failure to verify the charge, or to clarify or amplify allegations made therein. Such amendments . . . will relate back to the date the charge was first received." Even though Title VII does

not define the term "charge," the court below concluded that under the "plain meaning" rule of *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997), the two foregoing separate sections of the statute reflect the "unambiguously expressed intent of Congress" under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984), that for a charge alleging a violation of Title VII to be valid, it must be verified within the statutory limitations period. *Edelman v. Lynchburg College*, 228 F.3d 503, 507 (4th Cir. 2000). Thus, the court below held the regulation invalid because "to the extent that the regulation permits a charge to be verified after the expiration of the limitations period, it thwarts the plain language of Title VII." 228 F.3d at 508.

This conclusion is erroneous. The statutory language clearly does not satisfy the *Robinson* "plain meaning" standard because it is, if anything, silent on the question of the timing of the verification requirement. At a minimum, the language is ambiguous. In either event, pursuant to *Chevron*, the court may not ignore the EEOC's administrative interpretation of the statutory language and simply impose its own construction as the Fourth Circuit did here. Rather, the court must determine whether the effect given to the statute under the agency's regulatory authority is a permissible construction of the language at issue. *Chevron*, 467 U.S. at 842-43.

In *Robinson*, a Title VII case, this Court was confronted with the issue of whether Congress intended the protections of the statute to apply to former employees. Specifically, the statutory construction question in *Robinson* was whether in using the term "employees" in one section of the statute Congress meant to restrict the Act's substantive protections to only current employees. "The plainness or ambiguity of statutory language is

determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341. Applying those principles, *Robinson* concluded that the term "employees" as used in the statute was ambiguous, *id.*, and that broader context of the statute as well as the purpose of the statute as a whole compelled the conclusion that Congress intended an inclusive interpretation of the statutory language so that the term "employees" encompasses former employees. *Id.* at 347.

Although *Robinson* compels a three-part analysis to determine the meaning of statutory language, the court below, relied exclusively on the first *Robinson* principle:

> Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent."

Id. at 340, quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). Applying this standard, the Fourth Circuit concluded that the *only* possible meaning of the language of 42 U.S.C. §2000e-5(b) that "charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires," is that "if a discrimination claim is not in writing, under oath or affirmation, containing the information and in the form required by the Commission, it is not a charge." 228 F.3d at 508. The court went on to hold that "[b]ecause a charge requires verification and because a charge must be filed within

the limitations period, it follows that a charge must be verified within the limitations period." 228 F.3d at 508 (citations omitted).

The statutory language stating the content and verification requirements, however, contains no reference to their timing. The limitations language does not refer to verification. Thus, as pointed out in Judge Luttig's opinion concurring in the result, it does not necessarily follow that all the elements identified by the court as constituting a charge must be satisfied within the limitations period:

> [T]here is not necessarily the nexus required in order to sustain the plain meaning interpretation advanced in the opinion. That is to say, it seems to me at least plausible to read the first statute [42 U.S.C. §e-5(e)(1)] simply to require that a charge be filed within 180 days, and the second [42 U.S.C. §2000e-5(b)] as freestanding of the first, and simply to require that, before a charge is finalized, all of the allegations and information required by the EEOC be provided and verified.

228 F.3d at 512 (Luttig, Circuit Judge, concurring). Thus, not even the court below could agree on the "plain and unambiguous" meaning of the Title VII language.

Further, the meaning of the language that two of three Fourth Circuit judges found to plainly mandate verification within the limitations period has been widely interpreted in precisely the opposite manner under an analysis remarkably similar to *Robinson*'s three-part analysis. The fact that the circuits are split 4-2 over the timing of the verification requirement undermines the Fourth Circuit's conclusion that since the meaning of the statutory language is plain and unambiguous, courts

need not look beyond it. Indeed, prior to handing down the decision in this case, the Fourth Circuit was part of the circuit majority that endorsed the regulation it has now rejected and criticized a district court for "ignor[ing] the recent conclusion of this Circuit approving the very use of the regulation that [plaintiff], joined by the EEOC urges: allowing her verified claim to amend and relate back to the date her unverified claims was filed." *Tinsley v. First Union National Bank*, 155 F.3d 435, 439 n. 2 (4th Cir. 1998) (citing *Balasz v. Liebenthal*, 32 F.3d 151 (4th Cir. 1994)). Apparently, the court found nothing inconsistent between its conclusion in *Balasz* that "a reasonable construction of the regulation would simply allow charges to be verified and to relate back only so long as the charge is a viable one in the EEOC files," *Balasz*, 32 F.3d at 157, and its conclusion here that "a reasonable construction *must be imposed* on the regulation, one which does not allow relation-back of the verification requirement beyond the time limitation prescribed by Congress." 228 F.3d at 509 (emphasis added). Additionally, this latter conclusion is inconsistent with *Chevron*, since, if the meaning of the statutory language is plain as the court below found, the regulation is invalid and, thus, no construction of it is reasonable. It is only when the meaning of the statutory language is unclear, that the court may proceed to the second *Chevron* step and, in that event, it may not "impose" its own construction on the regulation, no matter how reasonable, but must determine only whether the agency's construction is "permissible." *See Chevron*, 467 U.S. at 842-43.

Even though all the circuit court decisions that have upheld the "relation back" doctrine of the EEOC regulation as a permissible interpretation of the statute pre-

ceded *Robinson*, every one considered the specific context in which the language is used as well as the broader legislative purposes of the statute. Implicit in these decisions is a rejection of the "plain meaning" analysis employed by the court below, since the principle underlying these decisions is that Title VII is remedial legislation to be construed liberally rather than technically. *See Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 397 (1982). Indeed, "[c]ertain well-established principles govern our assessment of the sufficiency of [a] charge," *Price v. Southwestern Bell Telephone Co.*, 687 F.2d 74, 79 (5th Cir. 1982), the most important of which is that "[c]onsistent with the remedial purposes underlying Title VII, we construe employment discrimination charges with the utmost liberality." *Id.*; *see Philbin v. General Elec. Capital Auto Lease, Inc.*, 929 F.2d 321, 323 (7th Cir. 1991) ("First, Title VII is remedial legislation which must be construed liberally.") Further, "bearing in mind that such charges are generally prepared by laymen untutored in the rules of pleading," *Price*, 687 F.2d at 79, "courts should avoid technical interpretations of [Title VII]'s procedural provisions which would defeat those remedial purposes." *Philbin*, 929 F.2d at 323; *see Casavantes v. California State University, Sacramento*, 732 F.2d 1441, 1442 (9th Cir. 1984) (emphasizing "the importance of non-technical interpretations of the procedural requirements inherent in the processing of discrimination claims.") The court below acknowledged that its holding conflicts with these decisions, but disagreed with them on the ground that they "improperly substitute policy justifications for clear statutory language." 228 F.3d at 511. To the contrary, it is the ambiguous nature of the statutory language that mandates further inquiry into the statutory context to ascertain congressional intent.

Those courts that have upheld the relation back doctrine have also relied on "the principal function of the administrative charge: the provision of an adequate factual basis for the Commission's initiation of the investigation and conciliatory procedures contemplated by Title VII." *Price*, 687 F.2d at 78. The relevant EEOC regulation states that "a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." 29 C.F.R. §1601.12(b). Whether verification occurs before or after the limitations period is of little moment to a respondent who is charged with discrimination, since the EEOC does not proceed to investigate a charge until it is verified. *See Peterson v. City of Wichita, Kan.*, 888 F.2d 1307, 1309 (10th Cir. 1989). On the other hand, instead of imposing a strict verification requirement based exclusively on an interpretation of the statutory language rejected by a majority of the circuits, applying a less restrictive, but equally plausible construction of the words of the statute "recognizes the remedial nature of the statute and does not prejudice an unwary victim of discrimination by insistence upon a formal requirement which can be supplied before the respondent is brought into the picture." *Blue Bell Boots, Inc. v. EEOC*, 418 F.2d 355, 357 (6th Cir. 1969); *see also EEOC v. Shell Oil Co.*, 466 U.S. 54, 76 n. 32 (1984) (the "function of an oath is to impress upon its taker an awareness of his duty to tell the truth.") As long as the charge is sworn to or affirmed before the respondent employer is required to respond to the investigation, that purpose is satisfied.

As demonstrated primarily by the holdings of the circuit majority, the conclusion of the court below that

the meaning of the statutory language of Title VII regarding the timing of the verification requirement is plain and unambiguous is incorrect. The court was, therefore, wrong to not proceed to the second step of the *Chevron* analysis and consider whether the EEOC regulation as applied under the circumstances demonstrates a permissible construction of the statute.

II. The EEOC Regulation Is a Reasonable Exercise of the Agency's Title VII Authority Over the Procedural Requirements for the Proper Filing and Treatment of Administrative Charges.

Pursuant to *Chevron*, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 843. Thus, the EEOC regulation should be upheld if it is a reasonable exercise of the authority granted to the agency under the statute. In fact, this Court has stated that "it is axiomatic that the EEOC's interpretation of Title VII, for which it has primary enforcement responsibility, need not be the best one by grammatical or any other standards. Rather, the EEOC's interpretation of ambiguous language need only be reasonable to be entitled to deference." *EEOC v. Commercial Office Products Co.*, 486 U.S. 107, 115 (1988). As pointed out by the government,[2] deference is particularly appropriate in this case because the regulation was adopted in 1966,

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[2] *Leonard Edelman, Petitioner v. Lynchburg College, On Petition for A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit, Brief For The United States And The Equal Employment Opportunity Commission As Amici Curiae* at 14-15.

soon after the enactment of Title VII and, although there have been minor changes, the substance of the regulation has remained in force ever since. Indeed, this Court has acknowledged that the EEOC's "contemporaneous construction" of Title VII "deserves special deference when it has remained consistent over a long period of time." *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 600 n. 17 (1981).

Based on its erroneous conclusion that the statutory language has one plain meaning, the court below found that it did not need to proceed with the second step of the *Chevron* analysis. This conclusion was also erroneous. Since the statute actually is silent or at the least ambiguous, *Chevron* compels the court to assess whether the regulation is a permissible implementation of the statutory language. Four circuits as well as the Fourth Circuit prior to this case have found it to be so. Under Title VII, filing an administrative charge with the EEOC initiates "an integrated, multi-step enforcement procedure" that enables the EEOC to detect and remedy various discriminatory employment practices. *See EEOC v. Shell Oil Co.*, 466 U.S. 54, 61-62 (1984). This process includes notice to the employer within a specified time period that a charge has been filed and the Commission's investigation of the charge. *See id.* at 63. *See also Pijenburg v. West Georgia Health System, Inc.*, 255 F.3d 1304 (11th Cir. 2001), 2001 U.S. App. LEXIS 15060 at *6 ("[A] charge, in addition to triggering the running of the statute of limitations, serves two significant functions: (1) notification to the employer that a discrimination charge has been lodged with the EEOC: and (2) initiation of the agency's investigation of the complaint.") "The limitations periods [of Title VII], while guaranteeing the protection of the civil rights laws to those who promptly

assert their rights, also protect employers from the burden of defending claims arising from employment decisions that are long past." *Delaware State Coll. v. Ricks*, 449 U.S. 250, 256 (1980). The verification requirement is intended to prevent harassment of employers with frivolous charges. *See Blue Bell Boots v. EEOC*, 418 F.2d 355, 357 (6th Cir. 1969). The regulation providing for relation-back of the charging party's post-limitations period verification of a charge filed within the applicable limitations period is reasonable and consistent both with the purposes of the statutory charge-filing requirement and the statute of limitations. The regulation embodies a construction of the Title VII requirements that "is particularly appropriate 'in a statutory scheme in which laymen, unassisted by trained lawyers initiate the process.'" *Oscar Mayer & Co. v. Evans*, 441 U.S. 450, 460 (1979), quoting *Love v. Pullman Co.*, 404 U.S. 522, 527 (1972).

CONCLUSION

The court below erroneously concluded that two separate sections of Title VII, the first describing the requirements for a valid charge and the second prescribing the limitations period, when read together had a plain and unambiguous meaning that precludes verification of a charge after the limitations period has run to relate back to the date of the timely filed charge as permitted by 29 C.F.R. §1601.12 (b). The court, therefore, held that the regulation was invalid. Since, however, the Title VII language at issue is, if anything, silent, or at best, ambiguous regarding the timing of charge verification, pursuant to *Chevron*, the plain meaning analysis invoked by the court below is completely inapplicable. Due

to the fact that the meaning of the Title VII language at issue is capable of more than one interpretation, this Court should reject the plain meaning analysis. Pursuant to *Chevron*, the Court should reverse the decision below and find that the EEOC regulation is not only reasonable, but also consistent with the statutory purposes of Title VII and, therefore, a valid exercise of the authority vested in the EEOC.

Respectfully submitted,

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